

**The Examiner's Rejections Under 35 U.S.C. 112, Second Paragraph, Should Be Withdrawn**

The Examiner has rejected claims 1-22 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, independent Claims 1, 8, and 16 recite "...heating the fabric at between about 350 degrees..." Claims 1, 8, and 16 are herein amended to remove the word "between". Claims 3 and 18 recite a trademark. Accordingly, Claims 3 and 18 are cancelled.

**The Examiner's Rejections Under 35 U.S.C. 102(b) Should Be Withdrawn**

Both the Patent Office and the CAFC (formerly the CCPA) have historically required that a single reference teach each and every element of the claim. That requirement is clear and unequivocal. Atlas Powder v. I.E. DuPont, 750 F.2d 1569, 224 USPQ 409 (CAFC 1984). James Bury Corp. v. Litton Industrial Products, 750 F.2d 1556, 225 USPQ 253 (CAFC 1985).

Claims 1, 4-8, 10-14, 16, and 19-22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Rodrigues (U.S. Patent No. 6,046,120). The goal here is to make such printed disperse pigments last through more washes. Applicant found that by applying a wicking agent to the fabric before printing, the crocking index could be increased. Rodrigues, on the other hand, has nothing to do with a printing of dyes onto a synthetic fabric. Rather, Rodrigues discloses how to fix a hydrophilic finish to a fibrous web by exhausting the hydrophilic finish onto the textile material during a dyeing process. The process of exhaustion, however, involves an aqueous bath, not printing. Applicant is printing disperse dyes on a synthetic-rich fabric. As suggested by the Examiners, Claims 1, 8, and 16 are amended to recite "printing disperse dyes" rather than "applying disperse dyes" to clarify Applicant's invention. As further discussed during the interview, if there is no anticipation under 102(b), then the alternative rejections under 103(a) should fall.

**The Examiner's Rejections Under 35 U.S.C. 103(a) Should Be Withdrawn**

The CAFC (and the CCPA before it) have repeatedly held that, absent a teaching or suggestion in the primary reference for the need, arbitrary modifying of a primary reference or combining of references is improper. The ACS Hospital Systems, Inc. v. Montefiore Hospital,

732 F.2d 1572, 1577. 221 USPQ 929, 933 (Fed. Cir. 1984). In re Gieger, 815 F.2d 686, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987).

Claims 2, 9, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodrigues as applied to Claims 1, 4-8, 10-14, 16, and 19-22, and further in view of Matsuba et al. (U.S. Patent No. 4,101,273). Specifically, the Examiner proposes to modify Rodrigues to include knitted polyester constructions with a soft hand and other objectives disclosed by Matsuba et al. Applicant respectfully disagrees with this rationale.

First of all, even assuming the combination were proper (and it is not), the combination fails to show that the crocking index of a synthetic fabric printed with a disperse dye can be enhanced by first treating the fabric with a wicking agent.

Secondly, the hydrophilic finish taught by Rodrigues is specifically directed at eliminating shortcomings inherent in certain textile materials such as their high affinity for oils, staining during washing, static cling, and wearer discomfort. Matsuba et al. is directed to a very specific process of disperse dyeing. To combine Matsuba et al. with Rodrigues is simply without any teaching or motivation. Further, the Examiner has not stated how the method of fixing the hydrophilic finish of Rodrigues could be combined with the continuous dyeing process of Matsuba et al. The fact that the two are in the same field of endeavor does not provide the teaching, motivation, or a reasonable basis for combining the references. Thus, Applicant respectfully submits that the rejections under 35 U.S.C. 103(a) should be withdrawn.

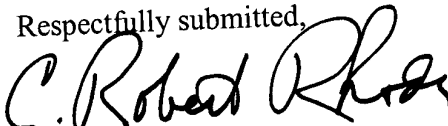
### **Conclusion**

Applicant believes that this case is now in condition for an immediate allowance with Claims 1-2, 4-17, and 19-22, and such action is respectfully requested. If any issue remains unresolved, Applicant's counsel would appreciate the opportunity for a telephone interview to expedite allowance.

If it has not yet been done, please change the mailing address for all correspondence in this case as follows:

**Womble Carlyle Sandridge & Rice, PLLC**  
**300 N. Greene Street, Suite 1900**  
**Greensboro, North Carolina 27401**

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Robert Rhodes". The signature is fluid and cursive, with the first name "C." and last name "Rhodes" clearly distinguishable.

C. Robert Rhodes

Registration No. 24,200

Lewis S. Rowell

Registration No. 45,469

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC  
300 N. Greene Street, Suite 1900  
Greensboro, NC 27401  
(336) 574-8090

Date: June 6, 2003

File No.: 2226-019

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**IN THE CLAIMS:**

Please cancel Claims 3 and 18.

Please amend the claims as follows:

1. (Amended) A printed [dyed] fabric with high [dye] penetration, high [dye] fixation, and a soft hand, formed by a process comprising the steps of:
  - (c) printing [applying] disperse dyes [directly to] on a synthetic-rich fabric, the synthetic-rich fabric having been pre-treated with a wicking agent; and
  - (d) fixing the disperse dyes to the fabric by heating the fabric at a preselected temperature and for a preselected time [between about 350 degrees Fahrenheit for between about 90 and 120 seconds], wherein the finished dyed knitted fabric has a dry crocking index of at least 4.0 and a soft hand.
  
8. (Amended) A garment made of a fabric construction that has a high degree of colorfastness and a soft hand, said fabric construction formed by a process comprising the steps of:
  - (b) printing [applying] disperse dyes [directly to] on a synthetic-rich fabric, the synthetic-rich fabric having been pre-treated with a wicking agent; and
  - (b) fixing the dyestuffs to the fabric by heating the fabric at a preselected temperature and for a preselected time [between about 350 degrees Fahrenheit for between about 90 and 120 seconds], wherein the finished dyed fabric has a crocking index of at least 4.0 and a soft hand.
  
16. (Amended) A method of forming a printed [dyed] fabric that has a high dye fixation and a soft hand, comprising:
  - (a) printing [applying] disperse dyes [to] on a synthetic-rich fabric, the synthetic-rich fabric having been pre-treated with a wicking agent; and
  - (e) fixing the disperse dyes to the fabric by heating the fabric at a preselected temperature and for a preselected time [between about 350 degrees Fahrenheit for

between about 90 and 120 seconds], wherein the finished dyed fabric has a dry crocking index of at least 4.0 and a soft hand.